

## § 241.590

under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988]

### PROPERTY REQUIREMENTS

#### § 241.590 Eligibility of property.

(a) A loan to be eligible for insurance shall be on real estate held:

- (1) In fee simple; or
- (2) On the interest of the lessee under a lease for not less than seventy-five years which is renewable; or
- (3) Under a lease having a period of not less than twenty-five years to run from the date the loan is executed.

(b) The property constituting security for the loan transaction must be held by an eligible borrower as herein defined and must at the time the loan is insured be free and clear of all liens other than those specifically approved by the Commissioner.

### TITLE

#### § 241.595 Eligibility of title.

In order for the property which is to be the security for a loan to be insured under this subpart to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

#### § 241.600 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a survey, satisfactory to the Commissioner, and a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (a) (2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commis-

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sioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project where the loan does not exceed \$200,000.

[45 FR 57983, Aug. 29, 1980, as amended at 58 FR 34217, June 24, 1993]

### FORM OF CONTRACT

#### § 241.605 Contract requirements.

(a) When the principal amount of the loan is \$100,000 or less, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) The contract between the borrower and the general contractor may be in the form of either a lump sum contract or a cost plus contract. Either form of contract shall include the cost of the energy conserving improvements, their installation, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary. A lump

sum contract shall provide for the payment of a specified amount. A cost plus contract shall provide for the payment of the contractor's actual cost of compliance with the requirements of the contract, plus such allowances for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed the upset price as approved by the Commissioner.

(2) If agreed to by the general contractor and borrower, a lump sum form of contract between the borrower and the general contractor may be used unless the Commissioner determines that a cost plus contract with a maximum upset price is necessary to protect the interest of the borrower or the Commissioner.

(b) When the principal amount of the loan is over \$100,000, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) *Lump sum contract.* If the Commissioner determines that there is no identity of interest between the borrower or any of the officers, directors or stockholders of the borrower and the contractor, there may be used a lump sum contract providing for payment of the specified amount.

(2) *Cost plus fixed fee contract.* (i) If the Commissioner determines that there is any identity of interest (financial or otherwise) between the borrower, its officers, directors or stockholders and the contractor, the form of contract shall provide for payment of the actual cost of construction not to exceed an upset price and may provide for payment of a fixed fee not exceeding a reasonable allowance as established by the Commissioner in accordance with customary practices in the area.

(ii) In any case where the borrower is a nonprofit entity, a cost plus fixed fee contract shall be used unless it is established to the Commissioner's satisfaction that such form of contract is not required to protect his/her interests and the interests of the borrower, in which case, a lump sum form of contract may be used.

#### § 241.610 Assurance of completion.

(a) The borrower shall furnish assurance of completion of the project in the following minimum forms and amounts:

(1) Where the estimated cost of construction of the improvements is \$500,000 or less, the borrower shall furnish assurance of completion of the project in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as general contractor.

(2) Where the estimated cost of construction of the improvements is more than \$500,000 or where such cost is less than \$500,000 and a personal indemnity agreement is not executed, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the minimum amount of 25 percent of the construction contract, or a completion assurance agreement secured by a cash deposit in the minimum amount of 15 percent of the amount of the construction contract.

(3) All types of assurance of completion shall be on forms approved by the Commissioner. Any surety company executing a bond and any party executing a personal indemnity agreement must be satisfactory to the Commissioner.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(b) The lender may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. In the event a demand under the letter of credit is not immediately met, the lender shall forthwith provide cash equivalent to the undrawn balance thereunder.

#### § 241.615 Certification of cost requirements.

(a) *Certification agreement.* The lender shall submit with the application an agreement on a form prescribed by the Commissioner and executed by the borrower and the lender.

(b) *Certificate and adjustment.* No loan shall be insured unless: